



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 510

## IN THE MATTER OF FRANK GREEN

### DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Frank Green ("Green") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 9, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Green. The Commission has concluded its inquiry and, on October 19, 1994, found reasonable cause to believe that Green violated G.L. c. 268A.

The Commission and Green now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Green was employed as the building inspector for the Town of Richmond. This was a part-time position to which Green was appointed by the Richmond Board of Selectmen and for which he was paid \$100 per month. As the Richmond building inspector, Green was a municipal employee as that term is defined in G.L. c. 268A, §1(g).<sup>1/</sup>

2. Green's official duties as the Richmond building inspector included issuing building permits for construction done in the town and performing inspections to ensure that all work performed pursuant to such permits complied with the state building code.

3. At all relevant times, Green was also self-employed as a carpenter and building contractor.

4. In 1992, Harold Dupee ("Dupee") owned a lakefront cottage at Richmond Shores which had been heavily damaged by fire and which Dupee wished to replace with a new house. Because of the cottage's lakefront location, Dupee was required to build his new house on the cottage's existing floor dimensions or "footprint". In November 1992, Green was present in his capacity as building inspector when Dupee measured the floor dimensions of the burned cottage. These measurements were used to determine the dimensions of Dupee's new house and were apparently somewhat greater than the dimensions of the existing cottage shown on the Richmond Town Assessor's card for the property.

Soon after the measurements of the burned Dupee cottage were made, Green was hired by Dupee to build a house to replace the burned cottage. After he was hired by Dupee, Green filled out an application for a building permit to build Dupee's new house and signed the permit as the applicant. On December 23, 1992, Green again signed the permit application, this time in his capacity as the Richmond building inspector, and obtained the required signatures of the Richmond zoning enforcement officer and the Richmond Board of Health. Green then issued the permit, allowing Green to proceed with the construction of Dupee's new house.

In the course of Green's construction of Dupee's new house, an issue was raised as to whether the new house was larger than the cottage it replaced.<sup>2/</sup> While the evidence on this point is contradictory, Green concedes that the floor area of the new house is approximately 80 square feet larger than the footprint of the old cottage.

Green attributes this difference to a lack of care on his part in checking Dupee's measurements of the footprint of the burned cottage, rather than deliberate action on Green's part. In April 1993, the Richmond Zoning Board of Appeals approved a special permit and variance for the new house without deciding the size issue.

Green was paid almost \$20,000 for his labor in building Dupee's house; Dupee provided the materials.<sup>3/</sup>

5. Green, in his capacity as the Richmond building inspector, issued the following additional building permits where Green had personally applied for the permit and where Green was the contractor hired by the owner to perform the permitted work:

- a. on January 10, 1990, a permit to raise a house and install a new foundation at a Richmond Shores property;
- b. on August 22, 1990, a permit to construct dormers at a Whitewood Cottages property;
- c. on August 29, 1990, a permit to rebuild a bathroom, replace windows and other work at a Branch Farm property;
- d. on September 26, 1990, a permit to expand the kitchen and construct a screened porch at a Whitewood Cottages property;
- e. on May 11, 1991, a permit to add a bedroom to a Richmond Shores property;<sup>4/</sup>
- f. on July 10, 1991, a permit to add sunshades at a Richmond Shores property;
- g. on September 9, 1992, a permit to construct a shed at an East Street property;<sup>5/</sup> and
- h. on November 18, 1992, a permit to construct an addition and a garage at a Richmond Shores property.

6. Section 19 of G.L. c. 268A, except as permitted by paragraph (b) of that section, prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he or an immediate family member has a financial interest. None of the exceptions of §19(b) apply in this case.

7. The decisions to issue the building permits listed in paragraphs 4 and 5 above were particular matters.

8. As set forth in paragraphs 4 and 5 above, Green participated as the Richmond building inspector in those particular matters by issuing the building permits.<sup>6/</sup>

9. Green, as the contractor performing the permitted work, had a financial interest in the issuance of each of the above-listed building permits. Green knew of his financial interest at the time he issued each of the building permits.

10. Accordingly, by issuing the building permits listed above in paragraphs 4 and 5, Green participated in his official capacity as the Richmond building inspector in particular matters in which he knew he had a financial interest. In so doing, Green violated G.L. c. 268A, §19.

11. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

12. By issuing building permits for work he would perform and by accepting construction contracts from property owners requiring building permits which he would issue, Green knowingly, or with reason to know, acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that persons hiring Green as their contractor could unduly enjoy his favor in the performance of his official duties as building inspector. This was particularly the case with respect to Green's official and private dealings with Dupee. Under the above-described circumstances, a reasonable person would conclude that Green was, as

building inspector, less strict with Dupee concerning conforming the dimensions of Dupee's new house with the footprint of the burned cottage than Green would otherwise have been, had Dupee not hired Green to build the new house. Accordingly, Green violated §23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Green, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Green:

(1) that Green pay to the Commission the sum of five hundred dollars (\$500.00)<sup>7/</sup> as a civil penalty for violating G.L. c. 268A as stated above; and

(2) that Green waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: November 22, 1994**

<sup>1/</sup> Green resigned as the Richmond building inspector in 1993.

<sup>2/</sup> In the course of this controversy, Green was advised that he might have a conflict of interest and Green self-reported his activities to the Commission. As soon as Green became aware of the conflict of interest, Green ceased issuing building permits for his own work.

<sup>3/</sup> Green was not the only contractor who worked on the construction of Dupee's house. Other contractors did the site work, installed the foundation, painted the house and did the landscaping.

<sup>4/</sup> In this case the building permit application was signed by the property owner rather than by Green.

<sup>5/</sup> In this case the building permit application was signed by both Green and the property owner.

<sup>6/</sup> Green did not, however, inspect the work he performed pursuant to the building permits he issued. All inspections of Green's work were performed by Richmond's alternate building inspector. In applying for and issuing these building permits for work he performed, Green was apparently following an established practice in Richmond which was apparently known to Green's appointing authority, the Board of Selectmen. Following an established practice which violates the conflict of interest law does not, however, obviate or excuse the violation. Nevertheless, it may be a mitigating circumstance to be considered in assessing the civil penalty imposed for the violation, as set forth above.

<sup>7/</sup> That Green's penalty is not higher reflects the fact that Green self-reported this matter to the Commission and ceased issuing building permits for his own work as soon as he was made aware of the conflict of interest. In addition, Green's violations are mitigated by the fact that Green was following an established, albeit unlawful, practice in issuing the building permits for his own work which was known to his appointing authority, the Board of Selectmen, and by the fact that Green did not inspect his own work (which was inspected by the alternate building inspector).